IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2596 OF 1986

Vishnu Narayan Sali Dahake	...	Petitioner
Vs.		
Shankar Laxman Muley & Ors.	...	Respondents

Mr. Vineet B. Naik for the petitioner.

Mr. M.S. Karnik for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 14TH/15TH MARCH, 2005.

P.C.:-

1. The petitioner is the original plaintiff/landlord in R.C. Suit No.940 of 1977. Respondent 1-A, 1-B and 1-C are the heirs of defendant 1 tenant - Shankar Laxman Muley. Respondent 2 Raj Narayan Sinha Raghuvir Sinha was substituted by Jagpath Yadav by this court's order dated 16/9/2002 passed in Civil Application No.1893 of 2002. For convenience, the parties are referred to in this judgment as per their status in the suit.

2. The plaintiff filed R.C. Suit No.940 of 1977 in the Court of Joint Civil Judge, Junior Division, Thane at Thane, against the original tenant Shankar Laxman Muley and respondent 2 Raj Narayan Sinha Raghuvir Sinha for possession of the suit premises. The case of the plaintiff was that he is the owner of the landed property

bearing Survey No.34, Hissa No.1/3 and No.3/1/4 situated at Village Kopri, Taluka and District Thane. The plaintiff owns and possesses a chawl in the said property which faces the Kopri Road. According to the plaintiff, original defendant 1 was a monthly tenant of the centre room or the gala of the said chawl. He had taken the said gala for running his flour mill business. Original defendant 1 was running his flour mill business in the said gala under the name and style of Laxmi Flour mill (for short, "the suit premises"). The monthly rent of the suit premises has been fixed by the court at Rs.25/- per month, which was exclusive of permitted increases. The plaintiff filed the suit for eviction of defendant 1 and also respondent 2 Raj Narayan Sinha Raghuvir Singh on the grounds of arrears of rent, carrying out permanent construction, sub-letting and nuisance.

3. The trial court dismissed the suit by its judgment and decree dated 18/6/1984. The trial court held against the plaintiff on all points. The plaintiff carried the matter in appeal being Civil Appeal No.249 of 1984. The lower appellate court dismissed the appeal and, hence, this writ petition.

4. I have heard, at some length, Mr. Naik, the learned counsel appearing for the petitioner. He concentrated basically on two grounds. He submitted that the finding returned by the courts below on the question of sub-letting and nuisance is perverse and, hence, deserves to be interfered with by this court in its writ

jurisdiction. The learned counsel contended that subletting has been wrongly held to be not proved. In this connection, the learned counsel relied on the judgment of the Supreme Court in **Bharat Sales Ltd. v. Life Insurance Corporation of India, (1998) 3 SCC 1** where the Supreme Court was considering what is the standard of proof required in case of sub-letting. Mr. Naik pointed out that the Supreme Court observed that sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. In this process, the landlord is kept out of the scene. The overt acts are done behind the back of the landlord clandestinely and, therefore, it is very difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. Mr. Naik contended that the said judgment would be clearly applicable to the facts of this case. It would be difficult for the landlord to get direct evidence of creation of sub-tenancy. Mr. Naik contended that, therefore, necessarily this court will have to draw an inference from the circumstances which have been brought on record by the plaintiff by leading evidence and, if the circumstances indicate, that someone else apart from the landlord is in the premises then the case of sub-tenancy is squarely made out.

5. Mr. Naik contended that it cannot be denied in this case that somebody else other than the plaintiff is in possession of the suit premises. In fact, defendant 2

has admitted in his affidavit that he is in possession of the suit premises. He has denied that he was conducting the flour mill as a servant of defendant 1. He has stated that he used to sign the muster roll but he has not received any payment from defendant 1. Mr. Naik contended that this evidence clearly establishes that defendant 1 has sub-let the suit premises to defendant 2. Mr. Naik also pointed out that the muster roll on which reliance is placed by the trial court pertains to the period subsequent to the filing of the suit and, therefore, cannot be relied upon to advance the submission that defendant 2 was a servant of defendant 1 and was accepting remuneration for his services from defendant 1. This muster roll appears to have been created to support the case that defendant 2 is a servant of defendant 1.

6. Mr. Naik then contended that there is no evidence on record to suggest that the flour mill is the source of income for defendant 1. Mr. Naik also contended that the documents on which the trial court has placed reliance do not further the case of the defendants. In fact, the suit premises were given to defendant 1 to conduct flour mill and the fact that he has in his possession the Establishment Certificate and Certificate issued from Industries Officer, security deposit receipt paid by him to the Maharashtra State Electricity Board or the NOC issued by the plaintiff for running the flour mill, would only be consistent with the plaintiff's case that the suit premises were given to defendant 1 for

conducting the flour mill. He submitted that it is the illegal sub-letting, which is a ground for eviction. He contended that sufficient evidence has been adduced by the plaintiff to infer the fact of sub-letting.

7. Mr. Naik then contended that the plaintiff has also urged the ground of nuisance. It is stated that the suit premises are situated in a residential locality and running of flour mill is causing nuisance to the neighbouring residents. It is averred in the plaint that the said mill has become a constant source of nuisance and annoyance to the plaintiff and the adjoining occupants. He urged that the trial court has not considered this issue at all and the lower appellate court has also not given proper treatment to this ground. In this connection, Mr. Naik relied on the judgment of this court in **Sushilabai s/o. Narayan Raut and others v. Navnit s/o. Bhojraj Lakhotiya, 2004 (4) Mh.L.J. 372**.

8. As against this, Mr. Karnik, the learned counsel for the respondents urged that both the courts have considered the evidence led by the plaintiff and the defendants indepth. After proper marshalling of evidence, the suit came to be dismissed and the appeal carried from the said judgment was also dismissed. The learned counsel urged that there is no perversity attached to the findings of facts of the courts below calling for any interference from this court in its writ jurisdiction. He submitted that this court should be slow in disturbing concurrent finding of fact in its writ

jurisdiction unless it suffers from patent illegalities or it is perverse. Mr. Karnik contended that such is not the case here and, therefore, the petition deserves to be dismissed.

9. In support of his case, the plaintiff has examined himself, one Subhash Ramchandra Pandit and one Rajaram Dadu Raut. Defendant 2 Raj Narayan Raghuveer Singh has examined himself. He has also examined one Bhandari Killi Kharwar and one Dhondu Ganpat. Defendant 1 has examined his son Dilip Shankar Muley.

10. Since Mr. Naik has addressed this court only on two grounds, viz. sub-letting and nuisance, it is necessary to deal with only those two grounds. Before I deal with them, it is necessary to refer to the judgment of the Supreme Court in **Bharat Sales Ltd.'s case (supra)**. The Supreme Court has observed that sub-tenancy is always created in a clandestine manner behind the back of the landlord and it is very difficult to get direct evidence of sub-tenancy. There, the Supreme Court was dealing with a case where there was no evidence to suggest that the person to whom the property was sub-let had paid monetory consideration to the tenant. The Supreme Court observed that payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lumpsum in advance covering the period for which the premises are let out or sub-let or it may have been paid or promised to be paid

periodically. The Supreme Court observed that since the payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let. This may apply not merely to evidence as regards monetary consideration but to other evidence also. It is obvious, therefore, that when the court has to draw an inference from the facts of the case, there can be no rigid or fixed rules or formula which the court has to follow. Each case will have different set of facts and, therefore, inferences drawn from facts would defer from case to case. If there is absence of direct evidence but other circumstances on record are so formidable and eloquent as to permit the court to draw an inference of sub-tenency, the court will undoubtedly draw it. The question is, whether such circumstances exist in this case or not.

11. In this case, the suit is filed in the year 1977. The case of the plaintiff is that the suit premises were let out to defendant 1 and defendant 1 sub-let the suit premises to a Bhaiya. However, defendant 2, who is supposed to be a sub-tenant of defendant 1 came to be added as defendant 2 only in the year 1982. It is significant to note that though the plaintiff all along knew that defendant 1 had created the alleged sub-tenancy and he has admitted, in his cross-examination, that in

the year 1979 he felt the need to add defendant 2 as a party to the suit, defendant 2 came to be added as a party to the suit only in the year 1982. In fact, despite knowledge of alleged sub-tenancy, it is not understood why the plaintiff did not file the suit at the earliest. Hence, from this fact, adverse inference needs to be drawn against the plaintiff. His case of sub-letting is considerably weakened because of the delay in filing the suit and also because he did not add defendant 2 as a party when he filed the suit.

12. The case of defendant 1 is that he is personally conducting the flour mill. He has appointed defendant 2 as his servant. According to defendant 1, he is not recovering rent from defendant 2. He has also denied the allegations of nuisance. Son of defendant 1 Dilip Muley has deposed about these facts. The case of defendant 2 is that the suit premises were sub-let to him 30 years back, that, he is a lawful sub-tenant; that he is a licensee pursuant to a leave and licence agreement executed prior to 1/2/1977 and, hence, he is a protected licensee and, he is paying monthly compensation to defendant 1. He has examined himself and deposed about these facts. It is his case that defendant 1 used to enter into fresh agreement of leave and licence and, he used to take back the old agreement from him. Defendant 2 has also examined one more witness Bhandari Killi Kharwar in support of his case.

14. Even though the plaintiff has come out with a case

of sub-tenancy, the plaintiff has not substantiated his case by producing any documents. Similarly, defendant 2, who claims to be a sub-lessee has also not produced any documents in support of his claim. No doubt, he has produced certain letters, bank pass book, voters list, ration card, etc. However, from that, it cannot be inferred that he is a sub-tenant. At the most, it can be said that he was working at the suit premises. But, these documents do not substantiate his case of sub-tenancy. Defendant 2 has produced the copy of the agreement dated 3/1/1975 allegedly signed by defendant 1. However, there is no mention about this agreement in his written statement. No original copy of the alleged agreement is produced on record. Hence, his case that there was a leave and licence agreement between him and defendant 1 is not proved.

14. As against this, defendant 1 has produced several documents, which have persuaded both the courts to hold that the plaintiff has not been able to prove that defendant 1 has sub-let the suit premises. He has produced the Establishment Certificate, which is at Ex-44. He has also produced the Certificate issued by Industry Officer; receipt of security deposit paid by him to the Maharashtra State Electricity Board and also the electricity bill paid by him. He has also produced a no objection certificate issued by the plaintiff for running the flour mill. All these documents thus indicate that defendant 1 is the owner of the flour mill and he is himself conducting it. He has then produced the muster

roll which indicates that defendant 2 was working as his servant and was receiving remuneration. It is significant to note that defendant 2 has admitted that he used to sign the muster roll, however he has stated that he did not receive any remuneration. This story cannot be accepted for the simple reason that if he was not receiving any money, he would have certainly made a complaint to that effect to defendant 1. There is no evidence to that effect on record. It is also significant to note that another witness Bhandari Kharwar, who was examined by defendant 2, has also stated that he has signed the muster roll of defendant 1. He has also stated that he used to work in the flour mill in the absence of defendant 2. He has also stated that he was not receiving any money from defendant 1. One would expect a person, who is forced to sign to lodge some complaint. There is no such evidence on record. It is, therefore, difficult to accept this story. The muster roll containing signatures of defendant 2 and Bhandari Kharwar, the witness of defendant 2 support the case of defendant 1 that defendant 1 was conducting the flour mill and that he had engaged defendant 2 as his servant. There appears to be a collusion between the plaintiff and defendant 2 to oust defendant 1 from the suit premises. Having gone through the evidence, I am of the opinion that the concurrent findings returned by the courts below cannot be characterised as perverse. If this case is examined in the light of the Supreme Court judgment in **Bharat Sales case (supra)**, I feel that here there is absence **of** eloquent circumstances which could have been a

good substitute for affirmative direct evidence and from which inference of illegal subletting could have been drawn. Therefore, the judgment in **Bharat Sales case (supra)** does not help the petitioner.

15. So far as the allegation that the flour mill is a source of nuisance and annoyance is concerned, the plaintiff has not led any convincing evidence in support of this allegation. The flour mill is admittedly there since 1958. The plaintiff has examined one Rajaram Raut, a resident of the area in support of his contention that the flour mill is a source of nuisance and annoyance. Rajaram Raut has clearly stated that they get their grain and chillies ground in the same flour mill. He has further gone on to say that on account of the grinding of the chilly powder, his family gets suffocated and, thus, flour mill is a nuisance to them. His statement that the factory is causing nuisance is belied by the fact that his family also sends food grains to the same flour mill. The evidence of this witness does not appear to be convincing. Besides, on the basis of the evidence of this lone witness, it cannot be concluded that the flour mill is a source of nuisance. The courts below have rightly found that this evidence is not convincing.

16. In the circumstances, I am of the opinion that the plaintiff has not been able to make out the case of nuisance also. Hence, the judgment of this court in **Sushilabai's case (supra)** has no application to the

present case. In view of the above, in my opinion, there is no substance in the petition and the petition is dismissed.

(SMT. RANJANA DESAI, J.)